

United States District Court
Central District of California

GABRIEL CORADINO NAVARRETE,
Plaintiff,

v.

THE SHERIFF'S DEPARTMENT OF
THE CITY OF MONTEREY PARK, et
al.,
Defendants.

Case No. 2:14-cv-01179-GAF(Ex)

**ORDER DENYING MOTION TO
DISQUALIFY JUDGES GARY A.
FEESS AND MARGARET M.
MORROW [18]**

I. INTRODUCTION

On June 4, 2014, Plaintiff Gabriel Coradino Navarrete filed his second Motion to Disqualify in this action. Navarrete's incoherent Complaint was dismissed by Judge Gary A. Feess for lack of subject-matter jurisdiction. After Judge Margaret M. Morrow denied Navarrete's subsequent motion to disqualify Judge Feess, Navarrete moved to disqualify her as well for allegedly assisting in the judicial system's plot to aid in the Defendants' persecution, harassment, and torture of Navarrete. Because Navarrete has presented no evidence or other indication that any valid basis for recusal exists, the Court **DENIES** Navarrete's Request. (ECF No. 18.)

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II. FACTUAL BACKGROUND

On February 14, 2014, Navarrete filed this pro se action against Defendants Leroy David Baca, The Sheriff's Department of the City of Monterey Park, and the County of Los Angeles for "Illegal with no consent Implantation of an electronic transmitter opener of circuits of the GPS satellites and and computers in the physical body of the victim Gabriel Conradino Navarrete." (Compl. at 1) Defendants subsequently brought a Motion to Dismiss Navarrete's Complaint for failure to state a claim. (ECF No. 7.) The Motion was set before Magistrate Judge Charles F. Eick. (*Id.*)

On April 24, 2014, Magistrate Judge Eick issued his Report and Recommendations. (ECF No. 11.) Magistrate Judge Eick found that "The Complaint consists of a rambling, largely incomprehensible narrative describing the alleged electronic monitoring and torture of Plaintiff by Sheriff Baca and others." (*Id.*) Magistrate Judge Eick reported that Navarrete's delusional allegations did not confer subject-matter jurisdiction and recommended that the Court (1) dismiss the Complaint without leave to amend, (2) dismiss the action without prejudice for lack of subject-matter jurisdiction, and (3) deny the Defendants' Motion as moot. (*Id.*)

On May 12, 2014, Navarrete filed his Objection Brief in response to the Report and Recommendation, and moved to disqualify Judges Feess and Eick. (ECF No. 13.) The Motion to Disqualify was referred to Judge Morrow for determination. (ECF No. 14.) On May 13, 2014, Judge Morrow denied Navarrete's Motion. (ECF No. 15.) Judge Morrow found that Navarrete failed to identify any extrajudicial bias that warranted the disqualification of Judges Feess and Eick. (*Id.*)

On May 20, 2014, Judge Feess adopted the recommendations of Magistrate Judge Eick and dismissed Navarrete's action without prejudice. (ECF Nos. 16, 17.)

On June 4, 2014, Navarrete filed yet another Motion to Disqualify, this time not only seeking to disqualify Judges Feess and Eick, but Judge Morrow as well. (ECF No. 18.) On June 9, 2014, the Motion was referred to this Court. (ECF No. 19.)

III. LEGAL STANDARD

The standard for disqualification of a federal judge is established by 28 U.S.C. §§ 144 and 455. In giving Navarrete the benefit of the doubt as a pro se movant, the Court construes his request under both statutes. Section 144 permits a party seeking disqualification to file an affidavit setting forth facts and reasons for his belief that the judge “has a personal bias or prejudice either against him or in favor of any adverse party.” 28 U.S.C. § 144. When determining the affidavit’s legal sufficiency, “the factual allegations in the affidavit must be accepted as true,” although “general or conclusory allegations will not support disqualification.” *United States v. Zagari*, 419 F. Supp. 494, 500–01 (N.D. Cal. 1976). Further, the alleged bias must be from an extrajudicial source and “result in an opinion on the merits on some basis other than what the judge learned from his participation in the case.” *United States v. Grinnell Corp.*, 384 U.S. 563, 583 (1966).

Under 28 U.S.C. § 455, a judge must disqualify herself in any proceeding in which one might reasonably question her impartiality. 28 U.S.C. § 455(a). But the substantive standard for recusal under §§ 144 and 455 is the same: whether a reasonable person with knowledge of all the facts would conclude that the judge’s impartiality might reasonably be questioned. *United States v. Hernandez*, 109 F.3d 1450, 1453–54 (9th Cir. 1997).

IV. DISCUSSION

Navarrete does not specifically address why he believes that the Court should recuse Judges Feess and Morrow under either §§ 144 or 455. Rather, Navarrete makes wild accusations about the Judges’ deliberate opposition to setting his “reproduced Human clones”—the sons and daughters of his “Human sperm cells” maintained in captivity by the Sheriff’s Department—free. (Mot. at 2.) But in any event, the Court finds that neither section compels Judge Feess and Morrow’s recusals. The Court therefore denies Navarrete’s Motion.

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1 **A. 28 U.S.C. § 144**

2 Section 144 requires the movant to file an affidavit stating “the facts and the
3 reasons for the belief that bias or prejudice exists.” § 144. Navarrete has filed no
4 such affidavit, thereby rendering his Motion procedurally defective. That failure is
5 alone enough to deny his recusal Motion.

6 But even if Navarrete had properly filed an affidavit, he has not demonstrated
7 that Judges Feess or Morrow exhibited any “personal bias or prejudice either against
8 him or in favor any adverse party.” *See* § 144. Rather, Navarrete only alleges that the
9 judges are “intentionally ignoring that the victim [Navarrete] is accusing ‘Judicial
10 System’ of the Los Angeles county . . . of protecting a criminal subject named Leroy
11 David Baca” (Mot. at 2.)

12 The Motion is rambling and incomprehensible, but the allegations that the
13 Court is able to understand are—as Magistrate Judge Eick pointed out—“frivolous,
14 delusional, and fanciful.” (ECF No. 12.) Liberally construing Navarrete’s rants as
15 allegations of personal bias, the issue Navarrete takes with Judges Feess and Morrow
16 is based on their rulings adverse to him—not on any extrajudicial source of bias. This
17 is insufficient. *Litkey v. United States*, 510 U.S. 540, 555 (1994) (“In and of
18 themselves . . . [judicial rulings] cannot possibly show reliance upon an extrajudicial
19 source; and can only in the rarest circumstances evidence the degree of favoritism or
20 antagonism required . . . when no extrajudicial source is involved.”); *Clemens v. U.S.*
21 *Dist. Ct. for the C.D. of Cal.*, 428 F.3d 1175, 1178-79 (9th Cir. 2005).

22 Judge Feess was fully authorized to dismiss Navarrete’s frivolous Complaint
23 for lack of subject-matter jurisdiction. He therefore acted within his authority—and
24 not as a result of any personal bias or prejudice—when he dismissed the Complaint
25 without leave to amend and dismissed the action without prejudice. Judge Morrow
26 fully considered Navarrete’s disjointed and often unintelligible Motion to Disqualify
27 Judge Feess and came to the only appropriate conclusion: Navarrete did not identify
28 any extrajudicial bias or interest that precluded Judges Feess and Eick from handling

1 this case. No reasonable person knowing of the Federal Rules of Civil Procedure and
2 this case's exacting circumstances would reasonably question the impartiality of
3 Judges Feess, Eick, and Morrow.

4 **B. 28 U.S.C. § 455**

5 Section 455 governs mandatory self-recusal. It largely overlaps with § 144.
6 Navarrete likewise has not presented any evidence that Judges Feess or Morrow failed
7 to recuse themselves based on any of the factors enumerated in § 455. There is no
8 indication that Judges Feess and Morrow have any financial interest, bias, or prejudice
9 concerning any party to this action. § 455(a), (b).

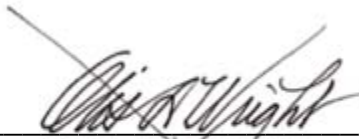
10 As discussed above, no reasonable person could reasonably question the
11 impartiality of Judges Feess, Eick, and Morrow considering this case's particular
12 circumstances. Rather, Judge Feess's Order dismissing Navarrete's case and Judge
13 Morrow's Order denying Navarrete's Motion to Disqualify reflect strict application of
14 the relevant law to the facts of Navarrete's case.

15 **V. CONCLUSION**

16 For the reasons discussed above, the Court **DENIES** Navarrete's Motion to
17 Disqualify Judges Feess and Morrow. (ECF No. 18.)

18 **IT IS SO ORDERED.**

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20 June 10, 2014



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23 **OTIS D. WRIGHT, II**
24 **UNITED STATES DISTRICT JUDGE**
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